IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 17502 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE D.P.BUCH

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

ASHABAEN @ AMIBEN RAMESHBHAI D/O RATANBHAI SHAH

Versus

COMMISSIONER OF POLICE SURAT CITY

Appearance:

1. Special Civil Application No. 17502 of 2003

MR JB DASTOOR for Petitioner No. 1

MR AB VYAS for Petitioner No. 1

Ms.Mita Panchal, AGP for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE D.P.BUCH

Date of decision: 21/04/2004

ORAL JUDGEMENT

The petitioner has filed this petition under

under Article 226 of the Constitution of India for appropriate writ, order or direction for quashing and setting aside an order dated 20.10.2003 passed by respondent No.1 under section 3(2) of the Gujarat Prevention of Anti-social Activities At, 1985 (for short, 'the PASA Act') directing detention of the present petitioner on the grounds stated in the detention order.

2. It was alleged against the petitioner that one offence was registered against the petitioner before Umra police station C.R. No.658/2003 on 29.8.2003 for offence punishable under sections 3,4 and 5 of the Immoral Traffic (Prevention) Act, 1956. It was also alleged against the petitioner that two witnesses have rendered statements against the petitioner whose names were not disclosed to the petitioner. On the strength of the afroesaid registered offence and unregistered cases, the petitioner was found to be dangerous person and with a view to prevent him from carrying on the said illegal activities, he was ordered to be detained.

3. Feeling aggrieved by the said order of detention, the petitioner has preferred this petition. It has been mainly contended that though the representation by the petitioner was submitted to the State Government as well as to the Advisory board, they were not dealt with and decided promptly and the delay has not been explained and therefore, the further continuance of the detention of the petitioner is illegal.

4. On receiving the petition, rule was issued and in response to the notice of rule, Ms Mita Panchal, learned AGP appears on behalf of the respondents. I have heard the learned Advocates for the parties and perused the papers.

5. During the course of his argument, the learned Advocate for the petitioner has produced on record the receipt of registered post and the postal acknowledgement which are taken on record. A copy of the representation submitted by the petitioner to the aforesaid authorities are found at Annexure 'B' at page No.46 as well as at page No.53. This shows that the petitioner had submitted representation to the State Government as well as to the Advisory Board under the PASA Act. The postal acknowledgement shows that the the representation was received by the said Advisory Board. However, when the petitioner has contended that there is no reply to the said representation and that the representation has not been considered by the said Board at all and there is no reply to the said contention by the present respondents,

it shows that the representation of the petitioner has not been considered by the Advisory Board. When a right has been conferred on the petitioner by virtue of Article 22 (5) of the Constitution of India for making effective representation against his detention, then the petitioner has got an equal right to have his representation decided by the appropriate authority. The right of submission of report is coupled with right of getting decision on his representation as early as possible. In the present case, we find that though the petitioner has exercised his right of submission of representation, since the representation has not been considered or at least there is no material to show that the representation was considered by the Advisory Board, it can be said that the petitioner's right has been defeated by non-consideration of the representation. In that view of the matter, the further continuance of the detention cannot be sustained in the eye of law. It is required to be recorded that there is no material to show that the Advisory Board has considered the representation of the petitioner and non-consideration of the representation is fatal to the detention of the petitioner.

6. For the foregoing reasons, this petition is allowed. The impugned order dated 20.10.2003 passed by respondent No.1 is ordered to be quashed and set aside. The detenu is ordered to be set at liberty forthwith, if no longer required in any other case. Rule is made absolute to the aforesaid extent. No order as to costs. D.S. permitted.

[D P Buch, J.]
msp